

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

Lausteveion Johnson,

Plaintiff,

v.

Jo Gentry, et al.,

Defendants.

Case No. 2:19-cv-00232-MMD-DJA

**Order**

Before the Court is *pro se* Plaintiff Lausteveion Johnson's motion to terminate defense counsel (ECF No. 98), motion for sanctions (ECF No. 102), and motion for appointment of counsel (ECF No. 106). Because Defendants' counsel has changed, the Court denies Plaintiff's motion to terminate defense counsel as moot. (ECF No 98). Because the Court finds that the delay about which Plaintiff complains is not sanctionable, but that a firm deadline is necessary, it denies Plaintiff's motion for sanctions and sets a deadline for the parties to file their joint pretrial order. (ECF No. 102). Because the Court finds that Plaintiff has established sufficient merit to his claims and exceptional circumstances, it grants Plaintiff's motion for appointment of counsel. (ECF No. 106).

**I. Discussion.**

**A. *The Court denies Plaintiff's motion to terminate defense counsel.***

Plaintiff moves to terminate Deputy Attorney General Lance White from representing Defendants in this case because Plaintiff asserts to have three active civil actions against White (ECF No. 98). However, on September 15, 2022, Defendants filed a notice of change of Deputy Attorney General. (ECF No. 108). Deputy Attorney General Lance White is no longer associated with this case and the Court denies Plaintiff's motion as moot.

1           ***B. The Court denies Plaintiff's motion for sanctions.***

2           Plaintiff moves for sanctions, arguing that White refused to meet and confer with him to  
3 come up with the joint pretrial order, causing the parties to miss their deadline multiple times.  
4 (ECF No. 102). Plaintiff asserts that he has never received a joint pretrial order from Defendants,  
5 despite the deadline being extended. (*Id.*). Indeed, the docket reflects that the joint pretrial order  
6 was initially due April 27, 2022. (ECF Nos. 67 and 78). When the parties missed that deadline,  
7 the Court extended it to June 21, 2022. (ECF No. 82). Plaintiff moved for sanctions on June 8,  
8 2022, explaining that the deadline was in two weeks, but that Defendants had refused to meet and  
9 confer to create the joint pretrial order. (ECF No. 89). The Court denied Plaintiff's motion for  
10 sanctions on June 22, 2022 and noted that "Defendants' response detail[ed] their efforts...even if  
11 the Court assumed Defendants were not diligent in meeting the Court's established deadlines, the  
12 sanctions Johnson requests are unreasonable." (ECF No 94). The Court again extended the  
13 deadline to July 19, 2022. (*Id.*).

14           Defendants' response to the instant motion does not address the missed deadlines. (ECF  
15 No. 104). And while Defendants assert to have met and conferred with Plaintiff on June 17, 2022  
16 regarding the joint pretrial order, their response was filed almost two months later but did not  
17 provide any explanation about the current status of the joint pretrial order. (*Id.*). On the other  
18 hand, White—the attorney with whom Plaintiff asserts he had difficulty communicating—is no  
19 longer on the case. (ECF No. 108).

20           The Court thus denies Plaintiff's motion for sanctions but sets a firm deadline by which  
21 the parties must file their joint pretrial order. It appears that discussions regarding the joint  
22 pretrial order have progressed slightly since the Court last extended the deadline. The Court does  
23 not find the delay sanctionable at this point. The Court will not order sanctions but will require  
24 the parties to file their joint pretrial order by **October 20, 2022**.

25           ***C. The Court grants Plaintiff's motion for appointment of counsel.***

26           Courts have authority to request that an attorney represent any person unable to afford  
27 counsel. 28 U.S.C. § 1915(e)(1). Whether to appoint counsel is within the discretion of the  
28 district court and requires a showing of exceptional circumstances. *Agyeman v. Corrections*

1 *Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004). To determine whether exceptional  
2 circumstances exist, courts consider the likelihood that the plaintiff will succeed on the merits as  
3 well as the plaintiff's ability to articulate his claims "in light of the complexity of the legal issues  
4 involved." *Id.* Neither factor is dispositive, and both must be viewed together. *Wilborn v.*  
5 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

6 In *Kern v. Henry*, the Honorable District Judge Richard F. Boulware appointed counsel to  
7 an inmate who asserted that HDSP violated his Eighth Amendment rights by imposing  
8 unconstitutional conditions of confinement. *See Kern*, 2017 U.S. Dist. LEXIS 62435, at \*1-4.  
9 The court first found that the inmate's claim was likely to succeed because it had survived  
10 summary judgment and would proceed to trial. *Id.* It then found that the inmate would have  
11 difficulty articulating his claim considering its complexity. *Id.* The court explained:

12 Plaintiff's Eighth Amendment conditions of confinement claim will  
13 involve both nuances of the law as it relates to different aspects of  
14 confinement, e.g. exercise and hygiene, and trial preparation in  
15 relation to witnesses who are confined (or were confined) with  
16 Plaintiff. While Plaintiff has been able to sufficiently raise genuine  
17 issues of material fact for the one claim that is proceeding, this  
18 standard is different and less burdensome than what he will face at  
19 trial. The court finds that complexity of the relevant legal issues and  
20 requirements for trial preparation in this case warrant the  
21 appointment of counsel.

19 *Id.*

20 Here, Plaintiff has demonstrated both a sufficient likelihood of success and an inability to  
21 articulate his claims considering the complexity of the legal issues. First, certain of Plaintiff's  
22 claims—like the plaintiff's claim in *Kern*—have survived summary judgment and are proceeding  
23 to trial. Second, Plaintiff's causes of action—like the cause of action in *Kern*—involve legal  
24 nuances of deliberate indifference to medical and mental health needs and the complexities that  
25 trial preparation on these issues presents. While Defendants are correct that Plaintiff has  
26 successfully maintained his case thus far, the complexity that preparing his pretrial order and  
27 preparing for trial presents warrants the appointment of counsel. And although Defendants assert  
28 that Plaintiff has substantial experience in filing lawsuits given his sixteen open cases, they do not

1 assert that those cases have passed screening or have proceeded as far as this one. The Court thus  
2 grants Plaintiff's motion under 28 U.S.C. § 1915(e).

3 Because the Court will exercise its discretion to appoint counsel and grant Plaintiff's  
4 motion for appointment of counsel, it will refer the case to the Court's Pro Bono Program to  
5 attempt to find an attorney to accept Plaintiff's case. Plaintiff should be aware that the Court has  
6 no authority to *require* attorneys to represent indigent litigants in civil cases under 28 U.S.C.  
7 § 1915(e). *Mallard v. U.S. Dist. Court for Southern Dist. of Iowa*, 490 U.S. 296, 298 (1989).  
8 Rather, when a court "appoints" an attorney, it can only do so if the attorney voluntarily accepts  
9 the assignment. *Id.* Additionally, Plaintiff is reminded that until counsel is appointed, he is still  
10 responsible for complying with all deadlines in his case. If counsel is found, an order appointing  
11 counsel will be issued by the Court, and Plaintiff will be contacted by counsel.

12 **IT IS THEREFORE ORDERED** that Plaintiff's motion to terminate defense counsel  
13 (ECF No. 98) is **denied as moot**.


14 **IT IS FURTHER ORDERED** that Plaintiff's motion for sanctions (ECF No. 102) is  
15 **denied**.

16 **IT IS FURTHER ORDERED** that Plaintiff's motion for appointment of counsel (ECF  
17 No. 106) is **granted**.

18 **IT IS FURTHER ORDERED** that this case shall be referred to the Pro Bono Program  
19 adopted in Second Amended General Order 2019-07 for the purpose of screening for financial  
20 eligibility (if necessary) and identifying counsel willing to be appointed as *pro bono* counsel for  
21 Plaintiff. Plaintiff is reminded that he must comply with all deadlines currently set in his case and  
22 there is no guarantee that counsel will be appointed. If counsel is found, an order appointing  
23 counsel will be issued by the Court, and Plaintiff will be contacted by counsel.

24 **IT IS FUTHER ORDERED** that the Clerk's office is kindly directed to forward this  
25 order to the Pro Bono Liaison.

26 DATED: September 20, 2022

27   
28 DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE